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November 7, 2014

United States Attorney
Eastern District of New York
610 Federal Plaza
Central Islip, NY 11722
Attn: James Miskiewicz
Assistant U.S. Attorney

RE: United States v. Philip Kenner & Tommy C. Constantine
Docket Number: 13-CR-607 (JFB)

Dear Mr. Miskiewicz:

In response to your letter of November 6, 2014 which I have now reviewed having returned to my office from court, it was my intention to use today's court appearance productively by arriving early to physically inspect my client's MacBook computer and i-Phone. I did so in anticipation that the case agent, Special Agent Matt Galito, would be present and, if notified in advance, would bring both the computer and i-Phone to your office for inspection by me, on behalf of my client, prior to the court appearance (*See letter*).

I made the request with the view that an afternoon e-mail to Special Agent Galito from your office--who I believe works out of the FBI offices in Melville, New York and where I surmised that the computer and i-Phone were located given the pending EDNY indictment--would result in the production of the computer and i-Phone at the previously scheduled court appearance as noted above. I do not recall our conversation on the morning of October 7, 2014 when you informed me that the evidence was located "in an evidence vault located at 26 Federal Plaza, Manhattan" but I will defer to your recollection in that regard. The mistake is mine, for which I apologize, because a 12:42 p.m. request on November 6, 2014 to produce for inspection the next day evidence located fifty one (51) miles away in Manhattan is unreasonable as noted by Judge Bianco.

In my defense, I did not take notes of our cafeteria room colloquy (brief as it was) and the ECF filings to date did not specify that my client's computer or i-Phone were secured in a vault in Manhattan. I would request, however, that my client's computer and i-Phone, together with other physical evidence that may exist, be secured at a location in EDNY, preferably the FBI offices located at 135 Pinelawn Road Melville, New York, where I have reviewed evidence on behalf of other client's in the past. Relocation of such evidence would appear to serve both the interests of the government and the defense as a trial date is likely to be set at the December 9, 2014 status

conference.

When you refer to my October 6, 2014 letter, filed at 8:41 p.m., requesting the inspection of certain evidence, *i.e.* MacBook computer and i-Phone, at your office the following morning, October 7, 2014, you will recall, as set forth in the letter, that it was preceded by two letters, one filed on October 1, 2014 and another filed on October 3, 2014, which requested the same opportunity to inspect the aforementioned items but were ignored by you and Ms. Komatireddy. Indeed, my late evening October 6th letter was intended to remind you and Ms. Komatireddy of my request in advance of the 1:00 p.m. status conference scheduled for the next day. As my client remains incarcerated, I look for every opportunity to meet with him and evaluate the evidence in preparation for trial, particularly when he is produced at courthouse in Central Islip.

I acknowledge and appreciate the efforts you undertook to make my client's computer and i-Phone available for inspection by me today on such late notice and have always regarded our professional relationship as one of mutual respect and courtesy. Given the pressures associated with our respective case loads and litigation schedules, your suggestion that we now communicate in writing on this case, as opposed to informal conferences in the cafeteria and hallways of the courthouse, is well received. I am encouraged that such an arrangement on this litigated matter will avoid unnecessary and regrettable personal disputes in the future.

And finally, thank you for clarifying in my mind whether I was requesting November 14th, November 21st, December 14th, or December 21st for the detention hearing. I believe that we settled on November 13, 2014 for the hearing.

Very truly yours,

Richard D. Haley

RICHARD D. HALEY

cc: Hon. Joseph f. Bianco (via ECF)